U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A29 785 270 - Napanoch Date: MAR 26 1996

In re: YONG WIN ZHENG a.k.a. Young Zheng a.k.a. Yonggin Zheng

IN DEPORTATION PROCEEDINGS

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MOTION

ON BEHALF OF RESPONDENT: Douglas B. Payne, Esquire
401 Broadway, Suite 1806
New York, New York 10013

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] - Entered without inspection

Sec. 241(a)(2)(A)(i), I&N Act [8 U.S.C. § 1251(a)(2)(A)(i)] - Crime involving moral turpitude

APPLICATION: Reopening

ORDER:

PER CURIAM. This case was last before us on August 28, 1995, when we dismissed the respondent's appeal because his conviction for an aggravated felony rendered him statutorily ineligible for asylum and withholding of deportation under sections 208(d) and 243(h)(2)(B) of the Immigration and Nationality Act. See Matter of K-, 20 I&N Dec. 418 (BIA 1991). The respondent has now filed a motion to reopen in which he again asserts eligibility for asylum and withholding of deportation and in which he seeks to prove that he can adjust his status to that of a permanent resident under the Chinese Student Protection Act ("CSPA").

Initially, we note that the respondent's statutory ineligibility for asylum and withholding of deportation has already been determined. This Board's decision dated August 28, 1995, is dispositive of the matter and is final. The instant motion does not allege any factual or legal error in our decision which would warrant reconsideration nor has he established that his aggravated felony conviction has been vacated such that reopening of these proceedings in order that he might seek to apply for asylum would be justified.

Concerning the respondent's assertion that he can adjust his status to that of a permanent resident under the CSPA, the respondent's application was not filed within the statutorily mandated time frame and we cannot consider the respondent's claim under these circumstances. In any event, we note that the respondent has failed to establish that he is prima facie eligible for adjustment of status

regardless of whether the respondent can establish that he is an alien covered by the CSPA. Applicants for adjustment under the CSPA must meet all requirements of section 245 of the Immigration and Nationality Act unless expressly exempted by the provisions of the CSPA. See 8 C.F.R. § 245.9(b)(6); see also Lin Qi-Zhuo v. Meissner, 70 F.3d 136 (D.C. Cir. 1995); Pan v. Reno, 879 F.Supp. 18 (S.D.N.Y. 1995). This includes a requirement that an applicant for adjustment under the CSPA establish that he is otherwise admissible to the United States as an immigrant, unless the basis for excludability has been waived. See 8 C.F.R. § 245.9(b)(5).

It is uncontested that the respondent is deportable from the United States for having been convicted of a crime involving moral turpitude, grand larceny in the second degree under N.Y. Penal L. § 155.40. The respondent's conviction renders him inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Yet, the only evidence submitted by the respondent in support of reopening, a copy of his passport, combined with the evidence of record (Tr. at 18), fails to establish his prima facie eligibility for a waiver of the basis for excludability. See 8 C.F.R. § 245.9(d); Matter of Lett, 17 I&N Dec. 312 (BIA 1980). Accordingly, the evidence submitted in support of reopening fails to establish the respondent's prima facie eligibility for adjustment of status under the CSPA. See 8 C.F.R. § 245.9(b)(5); 8 C.F.R. § 3.8.

Inasmuch as the respondent's motion to reopen fails to establish his prima facie eligibility either for asylum or withholding of deportation, or for adjustment of status through the provisions of the CSPA, his motion to reopen and motion for stay of deportation are denied. See Matter of Coelho, 20 I&N Dec. 464 (BIA 1992).

FOR THE BOARD